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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12
13 UNITED STATES OF AMERICA,) CASE NO. CR 20-71406 MAG
14 Plaintiff,)
15 v.)
16 ADRIAN KYLE BENJAMIN,)
17 Defendant.)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
The COVID-19 pandemic has caused an exponential rise in the online exploitation of children,
especially the enticement of children to produce sexually explicit content.¹ And predators like Benjamin
are to blame. Benjamin, a 24-year-old male, has a penchant for exploiting children over the internet. A
review of his devices pursuant to a March 2020 search warrant revealed that at least three children have
been victimized by him, enticed and manipulated to produce and send sexually explicit images and
videos. For purposes of detention, more concerning is Benjamin's inability (or perhaps simply his
refusal) to mend his ways. Since he was interviewed by law enforcement and his devices seized,

¹ See, e.g., <https://www.scientificamerican.com/article/the-coronavirus-pandemic-puts-children-at-risk-of-online-sexual-exploitation/> (last accessed October 5, 2020);
<https://www.cnn.com/2020/05/25/us/child-abuse-online-coronavirus-pandemic-parents-investigations-trnd/index.html> (last accessed October 5, 2020).

1 Benjamin, with the help of his mother and his mother's boyfriend, acquired new electronic devices. And
 2 he continued to engage in sexually explicit conversations with minors.

3 Benjamin is charged by complaint in this case with Receipt of Child Pornography, in violation of
 4 18 U.S.C. § 2252(a)(2). His charged conduct — which carries a presumption of detention — combined
 5 with his decision to continue sexually enticing minor victims, proves that Benjamin is a danger to the
 6 community who should be detained.

7 **I. Legal Standard**

8 The Bail Reform Act of 1984 permits pretrial detention of a defendant without bail where “no
 9 condition or combination of conditions will reasonably assure the appearance of the person as required
 10 and the safety of any other person and the community.” 18 U.S.C. § 3142(e)(1). Detention is appropriate
 11 where a defendant is either a danger to the community or a flight risk; it is not necessary to prove both.
 12 *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). A finding that a defendant is a danger
 13 to the community must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f)(2)(B). A
 14 finding that a defendant presents a risk of non-appearance need only be supported by a preponderance of
 15 the evidence. *Motamedi*, 767 F.2d at 1406.

16 Because this is “an offense involving a minor victim” under § 2252(a)(2), “it shall be presumed
 17 that no condition or combination of conditions will reasonably assure the appearance of the person as
 18 required and the safety of the community.” 18 U.S.C. § 3142(e)(3)(E). Once this presumption is
 19 triggered, “the defendant [must] produce some credible evidence forming a basis for his contention that
 20 he will appear and not be a threat to the community.” *United States v. Thomas*, 667 F. Supp. 727, 728
 21 (D. Or. 1987); *see also United States v. Castaneda*, No. 18-CR-00047-BLF-1, 2018 WL 888744, at *4
 22 (N.D. Cal. Feb. 14, 2018). And even where a defendant offers evidence to rebut the presumption, courts
 23 consider four factors to determine whether the pretrial detention standard is met: (1) the nature and
 24 circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the
 25 defendant’s history and characteristics; and (4) the nature and seriousness of the danger to any person or
 26 the community that would be posed by the defendant’s release. *See* 18 U.S.C. § 3142(g); *United States*
 27 *v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008).

1 **II. Argument**

2 Here, there already exists a rebuttable presumption *for* detention — a presumption that, for
 3 reasons discussed below, Benjamin cannot overcome. Moreover, even if Benjamin were able to rebut
 4 the presumption, the § 3142(g) factors weigh against pretrial release.

5 **A. Instant Offense**

6 Benjamin began communicating with Minor Victim 1 in 2018 — when she was about 14 years
 7 old. This was a fact that Benjamin knew and cherished.

8 [Benjamin]: I'm bot [sic] going to leave you because of your age dummy.
 9 How old are you? 16? 15? 32?
 10 Minor Victim 1: 14 ... turning 15 on [REDACTED]
 11 [Benjamin]: Okay that's fine
 12 You're still my little girl
 13 Jeez
 14 I still love you
 15 Okay?

16 When executing a search warrant on Benjamin’s electronic devices, the FBI found numerous
 17 sexually explicit images and videos of Minor 1. These videos, which are consistent with the descriptions
 18 provided by Minor Victim 1 to law enforcement, include the following:

- 19 • Video of what appears to be a female digitally penetrating her vagina with her middle
 20 and ring fingers.
- 21 • Video of what appears to be a screen recording from Snapchat of a female digitally
 22 penetrating her vagina with her middle and ring fingers.
- 23 • Video of what appears to be a screen recording of a fully naked female sitting on the
 24 floor exposing her breasts and vagina. The female is massaging her breasts and
 25 digitally penetrating her vagina with her middle and ring fingers.
- 26 • Video of what appears to be a screen recording from Snapchat of a female digitally
 27 penetrating her vagina with her middle and ring fingers.

28 During the search of his residence, Benjamin was interviewed by the FBI. He told agents that he
 29 meets many girls online through gaming platforms like Overwatch and then chats with them through
 30 applications like Discord, Instagram, and Snapchat. When shown images of the Minor Victim 1,

1 Benjamin stated that he recognized her and provided her true name. He said that he believed she was 16
 2 or 17 years old, and admitted to exchanging sexually explicit images and videos with her.

3 In addition to Minor Victim 1, Benjamin enticed several other children, and received sexually
 4 explicit images and videos from *at least* two others.² Minor Victim 2 was about 13 or 14 years old when
 5 she engaged in sexual chats and sexual videos with Benjamin. Minor Victim 3 was about 15 years old
 6 when she sent sexually explicit images to Benjamin and masturbated on video chats with him.
 7 Moreover, Benjamin didn't just receive child pornography from his minor victims — he made them
 8 produce it. He can often be seen instructing his victims and/or masturbating in his video calls with them.

9 Benjamin's communications with minor victims reflect a mastery over techniques that are known
 10 to be used by sexual predators of children, such as asserting himself as an authority figure, using
 11 romantic or intimate language, engaging in sexually explicit conversations, indicating a desire to meet in
 12 person, and using guilt to deter children from disengaging from contact. His conduct poses no less
 13 danger than — and can be as lethal as — loaded weapons or addictive drugs. Suicide, lifelong symptoms
 14 of post-traumatic stress disorder, and chronic difficulties with trust and intimacy are some of its
 15 documented consequences.³

16 B. Continuing Predatory Conduct

17 When the FBI interviewed him in March, Benjamin seemed surprised to hear that it was illegal
 18 to obtain child pornography from minors online. But Benjamin had ample opportunity to mend his ways
 19 after the FBI first confronted him and seized his devices. Instead, Benjamin acquired new devices with
 20 the help of his mother and his mother's boyfriend, and then continued to engage in sexually explicit
 21 conversations with potential minors.

22 As an example, in the months following the execution of the March search warrant, Benjamin
 23 engaged in the following conversations with Discord User 2 — whose profile and messages strongly
 24 indicate that she is a minor.

25

26 ² His phone contained evidence of multiple conversations with potential additional victims. Other
 27 records confirm that Benjamin has a pattern of reaching out to females, several of whom are confirmed
 minors, and engaging in enticement and grooming behavior.

28 ³ See <https://www.scientificamerican.com/article/the-coronavirus-pandemic-puts-children-at-risk-of-online-sexual-exploitation/> (last accessed October 5, 2020).

1 April 22, 2020

2 Discord 2: Why is ur game name kyle but ur discord name Jade?
3 [Benjamin]: Its part of a long story lol
4 Discord 2: So are u a guy or a girl?
5 [Benjamin]: Im a guy
6 I think
7 Discord 2: Okie
8 [Benjamin]: Lemme check
9 Yup still a guy
10 [Benjamin]: Wait how old are you
11 Discord 2: Guess
12 How old do I seem
13 [Benjamin]: Id say an educated guess would be *[Note: This is verbatim from Discord returns. Nothing further was reported.]*
14 Discord 2: Yeee
15 Good job
16 I mean yeah pretty much
17 [Benjamin]: Fuck im good lmao
18 [Benjamin]: Why are you up child
19 I just broke up with someone a couple days ago and theyre from Texas
20 Discord 2: Are you putting your Minecraft beds together
21 [Benjamin]: Im just going over for a quick fuck in the able sisters store

22 April 23, 2020

23 [Benjamin]: My sex dungeon
24 Lots of things to use
25 Im trying to get casting couch
26 You can go fuck yourself down there LOL
27 Ok get naked and come to dungeon
28 Oki
29 [Benjamin]: You wanna do thr [sic] fucking or be fucked
30 Discord 2: U choose
31 [Benjamin]: You know how to record video right
32 Discord 2: U just hold it down right
33 [Benjamin]: Yup
34 It caps last 30 seconds

35 April 24, 2020

36 [Benjamin]: When is your bday again
37 Jan?
38 You were like
39 I wish youbwere [sic] younger and lived near me
40 And it wouldnt be weird calling you daddy
41 Discord 2: I hate online schooolllll
42 My English teacher is a dick so I just dont do his work
43 The only thing I can keep up with is math
44 And sometimes science
45 My school also shoved most classes together so I only have science math eng and history
46 And pe on tues and thurs
47 [Benjamin]: You're literally gonna be like a sex toy to me
48 Discord 2: Am I really bout to drive up to bay for a fuck
49 Ur a whole 7 hours away

1 [Benjamin]: Plus i can come down there too
2 [Benjamin]: You probably touch yourself more than me no cap
3 Discord 2: I never said that
4 [Benjamin]: You dont have to
Discord 2: I said I was a virgin
[Benjamin]: So key is to get get really wet before I thrust in

5 April 25, 2020

6 [Benjamin]: You should try lightly pinching and twisting your nipples
Twist and pull till you slip off
Grope yourself while rubbing yourself
Or maybe you have to hear me order you to
7 Discord 2: Maybe
8 [Benjamin]: How about you try doing it rn
For daddy (:
9 Discord 2: Okayyyyy
10 [Benjamin]: Lemme know how you like it
Are you doing okay babygirl
I dont think i have you permission to rub
Unless you are counting my suggestion
11 Discord 2: I am sorry
12 I haven't came yet tho
Daddy can I cum?
13 [Benjamin]: Are you like
Fully masturbating?
Okay switch hands and finger with your right and suck the wet off your left
14 Discord 2: Yes daddy
15 [Benjamin]: Good girl
I want you to do that till the wet is all off your fingers
Let me know when you finish that
16 Discord 2: It's all gone
17 [Benjamin]: Thats my girl
Now switch again and suck your right
18 [Benjamin]: Can i actually trust you
Discord 2: Yee
Where did that question come from?
19 [Benjamin]: I just
Discord 2: You won't
I would never tell anyone
20 [Benjamin]: Im an adult right
Discord 2: But if it makes you uncomfortable we can just be friends and talk normal until
later
21 [Benjamin]: Bruh itll be again
Discord 2: You don't actually touch me
22 [Benjamin]: True..
Why do you actually want me to fuck you lmao
23 [Benjamin]: We can't treat it like a relationship okay
What's off limits for you
Besides meeting
24 [Benjamin]: Wym
Discord 2: Like what are things we arent going to do
Since phone sex is gonna be a thing
Like are we gonna send nudes etc

Discord 2: Uhmmmmmmm idkkkk
[Benjamin]: Youve neber [sic] send nudes huh
Discord 2: You tell me ur limits first while I think
[Benjamin]: I have no limit besides no saving sexual content
Discord 2: If we aren't saving it then should we use snapchat?
[Benjamin]: Yup

April 26, 2020

[Benjamin]: I kinda wanna cum but people are hom

I can get hard

Why

Discord 2: Why can't you cum?

[Benjamin]: I mean i can i guess

Should I? II

Dinner 12 You want anything while I do it

Discord 2: Do I want nudes?
Sure.

Sure

[Benjamin]: Sure thing
You wanna

You wanna touch with me or is it too risky
I think I cannnn

Discord z. [Benjamin]: I think I canhhh
[Benjamin]: Okie dokes

[Benjamini]. Okie dokes
Pants off?

Faults off.
Always

[Benjamin]: Rub, bu

[Benjamin]: Rus, but on the outside of your panties
Discord 2: Yes daddy

[Benjamin]: Use your other

Discord 2: Yes daddyyy

[Benjamin]: Good girl

Hmmcheck

[Benjamin]: Now you can move

Discord 2: Thank you daddy

[Benjamin]: You think you can

Discord 2: Yessss
Discord 3: Gahhhh

[Benjamin]: Good g

April 30, 2020

April 30, 2020
[Benjamin]: Shower picks sc

May 5, 2020
Discord 2: Maybe I am actually good at deepthroating lmao
[Benjamin]: Hmmmm
I guess we'll see when i fuck you right?

1 **C. COVID-19 Does Not Warrant Pretrial Release**

2 Magistrate Judges in this Court have held that the current health crisis does not alter the criteria
 3 for detention under the Bail Reform Act.⁴ Nothing about the COVID-19 pandemic mitigates the danger
 4 that Benjamin will continue to entice children to produce and send sexually explicit content to him. To
 5 the contrary, as discussed above, limitations wrought by the pandemic make it *more* likely that he will
 6 successfully exploit his home- and computer-bound victims. Finally, the government is aware of no facts
 7 (such as advanced age or medical condition) that would place Benjamin at greater risk of developing a
 8 serious illness if he contracted COVID-19.

9 **D. The § 3142(g) Factors Weigh Against Pretrial Release.**

10 “The presumption [of detention] is not erased when a defendant proffers evidence to rebut it;
 11 rather the presumption remains in the case as an evidentiary finding militating against release, to be
 12 weighed along with other evidence relevant to factors listed in § 3142(g).” *Hir*, 517 F.3d at 1086
 13 (internal quotation marks omitted). Here, even if Benjamin were to rebut the presumption of pretrial
 14 detention, the § 3142(g) factors weigh against pretrial release. Cf. *United States v. Marigny*, No. 20-MJ-
 15 70755-MAG-1, 2020 WL 4260622, at *1 (N.D. Cal. July 24, 2020) (granting motion to revoke pretrial
 16 release order where defendant masqueraded as a teenage girl on Instagram to induce, entice, persuade,
 17 and use preteen and teenage boys to create and send him visual depictions of sexually explicit conduct,
 18 and to engage in sexual conduct.)

19 The nature and circumstances of the offense charged. Congress has recognized that, “where
 20 children are used in its production, child pornography permanently records the victim’s abuse, and its
 21 continued existence causes the child victims of sexual abuse continuing harm by haunting those children
 22 in future years.” Child Pornography Prevention Act of 1996, Pub. L. No. 104-208 § 121, 110 Stat. at
 23

24 ⁴ In a written order, U.S. Magistrate Judge Susan van Keulen rejected a motion for release premised on
 25 the emergence of COVID-19, concluding that the existence and spread of COVID-19 did nothing to
 26 undermine the Court’s previous findings regarding risk of non-appearance and danger to the community.
United States v. Trujillo, No. 20-CR-00028-EJD-1 (SVK), Dkt. 15 (N.D. Cal.); see also, e.g., *United*
27 States v. Sanchez, No. 19-CR-00576-VC (JSC), Dkt. 23 (N.D. Cal.) (oral order denying bail motion
 28 premised on COVID-19 concerns); *United States v. Traore*, No. 20-CR-029-VC (JSC), Dkt. 28 (N.D. Cal.) (same); *United States v. Campos*, No. 19-CR-0280-RS (JSC), Dkt. 95 (N.D. Cal.) (same); cf. *In the Matter of the Extradition of Alejandro Toledo Manrique*, No. 19-MJ-71055-MAG-1 (TSH), Dkt. 115
 (granting motion for release premised on COVID-19 concern in extradition proceeding, with different standards for release than under the Bail Reform Act, where defendant was more than 70 years old).

1 3009, 3009-27 (1996). Additionally, the Supreme Court has said that child pornography “produces
2 concrete and devastating harms for real, identifiable victims.” *Paroline v. United States*, 572 U.S. 434,
3 457 (2014). Courts considering the matter have thus found that even possessing child pornography — let
4 alone receiving it after enticing victims to produce the material — weighs in favor of detention. See
5 *United States v. Bell*, No. SACR 08-00087-MMM, 2008 WL 11411709, at *2 (C.D. Cal. June 6, 2008)
6 (collecting cases).

7 Weight of the evidence. Though the “least important of the various factors,” courts must consider
8 the evidence in terms of the likelihood that defendant will pose a danger. *Hir*, 517 F.3d at 1090. As
9 discussed above, the weight of the evidence against Benjamin is considerable, and includes his receiving
10 child pornography from at least three minor victims.

11 Defendant's history and characteristics. Though Benjamin appears to have family ties and a lack
12 of criminal history, his decision to continue engaging in sexually explicit conversations with potential
13 minors even after the FBI executed a search warrant in his home confirms that he is a predator who,
14 regardless of the conditions imposed, will remain a threat to children if granted pretrial release.

15 Nature and seriousness of the danger to the community. Danger is no less real simply because it
16 occurs online. The potential further commission of similar offenses against minor victims poses a grave
17 risk to potential victims and the community at large. The production, collection, and/or transmission of
18 child pornography inflicts lifelong damage on its victims.

19 || ****

Because there are no conditions of release that could reasonably assure the safety of the community, in particular Benjamin's minor victims, the United States requests that he be detained.

22 DATED: October 6, 2020

Yours sincerely,

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